

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

HELBACHS CAFE, LLC,

Plaintiff,

v.

ORDER

20-cv-758-wmc

CITY OF MADISON, COUNTY OF
DANE, JANEL HEINRICH, MARCI
PAULSEN and BONNIE KOENIG,

Defendants.

Having reviewed the parties' submissions on defendants' motion for summary judgment, the court requires additional briefing. Defendants raised for the first time in their reply brief that plaintiff has failed to prove, must less plead, the necessary elements to support a *Monell*¹ claim. As context, because defendants mistakenly interpreted plaintiff's claims brought against the three individuals as individual or personal capacity claims, rather than official capacity claims, defendants did not raise this argument in their opening brief, and thus, plaintiff had no opportunity to respond to the argument. Because this argument appears to have merit, at least as to certain of its § 1983 claims, and the court is reluctant to proceed to trial on *Monell* claims against the City of Madison and Dane County since there appears to be no underlying policy, practice or custom to satisfy that element, the court instead will provide plaintiff with an opportunity to respond to this argument pursuant to Federal Rule of Civil Procedure 56(f).

Accordingly, IT IS ORDERED that:

1) On or before September 23, 2021, plaintiff is directed to submit supplemental

¹ *Monell v. Dep't of Social Services of the City of New York*, 436 U.S. 658 (1978).

briefing as detailed above.

2) The pretrial deadlines and trial date are STRUCK.

3) The court will hold a conference, if necessary, on November 1, 2021.

Entered this 9th day of September, 2021.

BY THE COURT:

/s/

WILLIAM M. CONLEY
District Judge